

SB 362 STAFF MEASURE SUMMARY

Carrier: Rep. Barker

House Committee On Judiciary**Action Date:** 05/22/19**Action:** Do Pass.**Vote:** 11-0-0-0**Yeas:** 11 - Barker, Bynum, Gorsek, Greenlick, Lewis, McLane, Piluso, Power, Sprenger, Stark, Williamson**Fiscal:** Has minimal fiscal impact**Revenue:** No revenue impact**Prepared By:** Gillian Fischer, Counsel**Meeting Dates:** 4/22, 5/22**WHAT THE MEASURE DOES:**

Requires defendant to file written notice of intent to introduce evidence of insanity or diminished capacity defense at least 45 days before trial. Allows the court to permit a defendant to file notice within 45 days of trial for good cause shown.

ISSUES DISCUSSED:

- Provides state with opportunity to get independent evaluation
- Encourages efficiency in court system
- Case law interpretation not consistent with original statutory intent

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

ORS 161.309(3) provides that a criminal defendant must provide notice of their intent to use an insanity defense at time the defendant pleads not guilty. The defendant may file the notice at any time after the plea but before trial when just cause for failure to file the notice at the time of making the plea is shown. If the defendant fails to file notice, the defendant may not introduce evidence to establish an insanity defense unless the court permits the evidence to be introduced for just cause shown.

In *State v. Robinson*, 288 Or App 194 (2017), the defendant did not provide notice at the time of her plea that she intended on pursuing an insanity defense, and the parties agreed that there was no basis for her to do so at that time. A month before trial, defense counsel obtained a preliminary psychologist's report indicating that an insanity defense was a possibility. Two weeks later, defense counsel received the final report and provided written notice of intent to pursue the insanity defense. The state moved to exclude the evidence on insanity, arguing that there was no just cause for not filing the written notice when defense counsel first became aware of the possibility. The trial court excluded that evidence, but the Court of Appeals later reversed.

In interpreting the statute, the Court of Appeals held that a defendant merely had to show just cause for not filing the notice at the time of arraignment. And, if she had just cause for not providing the written notice at that time, she could wait up to the day of trial to provide the notice—even if she became aware of her intent to rely on such a defense long before trial. The court acknowledged that this interpretation would make trial preparation extremely difficult for the state, but noted that the current language of the statute compelled the result, absent a legislative change.

Senate Bill 362 requires notice of an intent to pursue an insanity defense be filed at least 45 days before trial unless a court finds good cause for failure to do so.